

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JOHN O'SHEA,

Plaintiff,

vs.

LYNN GUYER, WARDEN; PAUL
REESE, and JAMES HURST,

Defendants.

CV 19-57-H-DLC-JTJ

ORDER

On July 15, 2020 United States Magistrate Judge John T. Johnston entered Findings and Recommendations recommending that this matter be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. (Doc. 19.) O'Shea does not object. A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

There is no clear error in Judge Johnston's determination that this case should be dismissed for failure to prosecute. O'Shea has been given multiple

opportunities to comply with the Court's order and file his initial disclosure statement. (Docs. 12, 18.) After missing the first deadline, Judge Johnston provided O'Shea with an extension to submit his disclosure and warned him that failure to do so could result in his case being dismissed. (Doc. 18 at 1.) When O'Shea still did not submit his disclosure by the extended deadline, Judge Johnston recommended the case be dismissed for failure to prosecute. (Doc. 19.) Although O'Shea had a 14-day window to object to the recommendation—and explain his failure to timely file his disclosure—O'Shea did not respond. As Judge Johnston noted, this case is in a critical stage: discovery is about to close and the motion's deadline is approaching. (Doc. 19 at 2.) The Court agrees with Judge Johnston's analysis of the factors that support dismissal under Rule 41(b) as described in *Pagtalunan v. Galaza*, 291 F.3d 639 (9th Cir. 2002), and will dismiss the case.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 19) is ADOPTED in full.

1. This Matter is DISMISSED pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

2. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 5th day of August, 2020.



Dana L. Christensen, District Judge
United States District Court